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## NOTICE OF ALLOWANCE AND FEE(S) DUE

466 7590 09/14/2009

YOUNG & THOMPSON  
209 Madison Street  
Suite 500  
ALEXANDRIA, VA 22314

EXAMINER

HENRY, MICHAEL C

ART UNIT

PAPER NUMBER

1623

DATE MAILED: 09/14/2009

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/527,819

10/11/2005

Pierre Monsan

0508-1129

4568

TITLE OF INVENTION: USE OF PREBIOTICS, PREFERABLY GLUCOOLIGOSACCHARIDE, FOR THE PREVENTION OF THE ONSET OF TYPE II DIABETES

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1510	\$300	\$0	\$1810	12/14/2009

**THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.**

**THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.**

### HOW TO REPLY TO THIS NOTICE:

#### I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.**

# **PART B - FEE(S) TRANSMITTAL**

**Complete and send this form, together with applicable fee(s), to: Mail Mail Stop ISSUE FEE  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
or Fax (571)-273-2885**

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

466 7590 09/14/2009

**YOUNG & THOMPSON**  
209 Madison Street  
Suite 500  
ALEXANDRIA, VA 22314

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

## **Certificate of Mailing or Transmission**

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/527,819 10/11/2005 Pierre Monsan 0508-1129 4568

TITLE OF INVENTION: USE OF PREBIOTICS, PREFERABLY GLUCOOLIGOSACCHARIDE, FOR THE PREVENTION OF THE ONSET OF TYPE II DIABETES

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
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nonprovisional NO \$1510 \$300 \$0 \$1810 12/14/2009

EXAMINER	ART UNIT	CLASS-SUBCLASS
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HENRY, MICHAEL C 1623 514-054000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.

☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list

(1) the names of up to 3 registered patent attorneys or agents OR, alternatively, 1 \_\_\_\_\_

(2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. 2 \_\_\_\_\_

3 \_\_\_\_\_

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent) : ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

- ☐ Issue Fee  
☐ Publication Fee (No small entity discount permitted)  
☐ Advance Order - # of Copies \_\_\_\_\_

4b. Payment of Fee(s); (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.  
☐ Payment by credit card. Form PTO-2038 is attached.  
☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number \_\_\_\_\_ (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature \_\_\_\_\_

Date \_\_\_\_\_

Typed or printed name \_\_\_\_\_

Registration No. \_\_\_\_\_

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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EXAMINER

HENRY, MICHAEL C

ART UNIT

PAPER NUMBER

1623

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## Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 284 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 284 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/527,819	MONSAN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	MICHAEL C. HENRY	1623	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed 06/12/09.
2. ☒ The allowed claim(s) is/are 49, 50, 53, 56 and 63. The claims are renumbered 1-5, respectively.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* Certified copies not received: \_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_.

**Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| <ol style="list-style-type: none"> <li>1. <input type="checkbox"/> Notice of References Cited (PTO-892)</li> <li>2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</li> <li>3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br/>Paper No./Mail Date ____</li> <li>4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br/>of Biological Material</li> </ol> | <ol style="list-style-type: none"> <li>5. <input type="checkbox"/> Notice of Informal Patent Application</li> <li>6. <input type="checkbox"/> Interview Summary (PTO-413),<br/>Paper No./Mail Date ____.</li> <li>7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment</li> <li>8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance</li> <li>9. <input type="checkbox"/> Other ____.</li> </ol> |
|--|---|

/Shaojia Anna Jiang/  
Supervisory Patent Examiner, Art Unit 1623

Art Unit: 1623

***EXAMINER'S AMENDMENT***

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Robert Madsen (Reg # 58543) on 09/08/09. The examiner's amendment includes the status of all claims in the Application.

The application has been amended as follows:

1-48. (cancelled).

49. (currently amended) A method for treating hyperglycemic syndrome and/or type II diabetes in a subject, comprising: administering to a subject in need thereof an effective amount of prebiotic non-digestible oligosaccharides comprising glucooligosaccharides (GOS) whose degree of polymerization is ~~between~~ from 2 ~~and to~~ 10, the composition of said glucooligosaccharides (GOS) being as follows (dry matter content):

less than 1% fructose,

less than 4% glucose,

9-11% disaccharides wherein at least one disaccharide is selected from the group consisting of maltose, leucrose, and sacharose,

9-11 % trisaccharides selected from the group consisting of panose and maltotriose,

5 to 7% GOS with a degree of polymerization 4,

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8 to 10% GOS\* with a degree of polymerization 4,

18 to 22% GOS with a degree of polymerization 5,

36 to 44% GOS with a degree of polymerization greater than 5, and

wherein each GOS comprises a glycosidic  $\alpha(1\rightarrow2)$  bond at its non-reducing end or carried by the next-to-last glucose, with the exception of GOS\* which does not contain any.

50. (previously presented) The method according to claim 49, wherein prebiotics comprising GOS are administered at a rate of 1.5g/kg/day or a rate of approximately 10 to 30 g/day.

Claims 51-52. (cancelled)

53. (currently amended) A food composition, nutritional additive, functional food or nutraceutical for the nourishment of subject having hyperglycemic syndrome and/or type II diabetes in a subject, comprising one or more prebiotics wherein said prebiotics are ~~chosen from~~ ~~the~~ compositions of non-digestible oligosaccharides comprising chain formations of identical or different monosaccharides, whose degree of polymerization varies ~~between~~ from 2 and to 10, and whose monosaccharides are selected from the group consisting of glucose, fructose, galactose, xylose, mannose, rhamnose and fucose, ~~and~~

wherein a food composition ~~substantially~~ comprising a mixture of isomaltotriose, isomaltotetraose and isomaltopentose is excluded, ~~and~~

wherein fructooligosaccharides are excluded,

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~~whose~~ wherein the prebiotics are ~~chosen from the~~ glucooligosaccharides (GOS),  
the composition of said glucooligosaccharides (GOS) being as follows (dry matter content):

- fructose: less than 1%,
  - glucose: less than 4%,
  - disaccharides where at least one of said disaccharides is selected from the group consisting of maltose, leucrose, and sacharose : from 9 to 11%,
  - trisaccharides where at least one of said trisaccharides consisting of panose, or maltotriose: from 9 to 11%,
  - GOS with a degree of polymerization 4: from 5 to 7%,
  - GOS\* with a degree of polymerization 4: from 8 to 10%,
  - GOS with a degree of polymerization 5: from 18 to 22%,
  - GOS with a degree of polymerization greater than 5: from 36 to 44%, and
- wherein each GOS comprises a glycosidic  $\alpha(1\rightarrow2)$  bond at its non-reducing end or is carried by the next-to-last glucose, except GOS\* does not contain any.

Claims 54-55. (cancelled)

56. (currently amended) A pharmaceutical composition comprising a pharmaceutically acceptable vehicle, one or more prebiotics ~~chosen from the~~ said prebiotics being compositions of non-digestible oligosaccharides comprising chain formations of identical or different monosaccharides, whose degree of polymerization varies ~~between from 2 and to~~ from 2 and to 10,

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and whose monosaccharides are ~~chosen from~~ selected from the group consisting of glucose, fructose, galactose, xylose, mannose, rhamnose and fucose, and

wherein fructooligosaccharides are excluded,

wherein the prebiotics are ~~chosen from the~~ glucooligosaccharides (GOS) and the composition of said glucooligosaccharides (GOS) are as follows (dry matter content):

- fructose: less than 1%,
  - glucose: less than 4%,
  - disaccharides wherein at least one of said disaccharides is selected from the group consisting of maltose, leucrose, and sacharose : from 9 to 11%,
  - trisaccharides wherein at least one of said trisaccharides is panose, or maltotriose: from 9 to 11%,
  - GOS with a degree of polymerization 4: from 5 to 7%,
  - GOS\* with a degree of polymerization 4: from 8 to 10%,
  - GOS with a degree of polymerization 5: from 18 to 22%,
  - GOS with a degree of polymerization greater than 5: from 36 to 44%, and
- wherein each GOS comprises a glycosidic  $\alpha(1\rightarrow2)$  bond at its non-reducing end or carried by the next-to-last glucose, except GOS\* does not contain any.

Claims 57-62. (cancelled)

63. (previously presented) A composition, comprising:

prebiotic glucooligosaccharides (GOS) on a dry matter basis as follows:



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less than 1% fructose,

less than 4% glucose,

9-11% disaccharides wherein at least one disaccharide is selected from the group consisting of maltose, leucrose, and sacharose,

9-11 % trisaccharides selected from the group consisting of panose and maltotriose,

5 to 7% GOS with a degree of polymerization 4,

8 to 10% GOS\* with a degree of polymerization 4,

18 to 22% GOS with a degree of polymerization 5,

36 to 44% GOS with a degree of polymerization greater than 5, and

wherein each GOS comprises a glycosidic  $\alpha(1 \rightarrow 2)$  bond at the non-reducing end or at the next-to-last glucose, with the exception of GOS\* which does not contain a glycosidic  $\alpha(1 \rightarrow 2)$  bond.

### ***REASONS FOR ALLOWANCE***

The following is an examiner's statement of reasons for allowance: The examiner has found claims 49, 50, 53, 56, 63 to be unobvious over the prior art of record and therefore to be allowable over the prior art of record.

The method and composition of claims 49, 50, 53, 56, 63 are not taught or suggested in the prior art and are not obvious over the prior art. For example, composition and the use of said composition which comprises specific ingredients, compounds or substances are not taught or suggested in the prior art and are not obvious over the prior art

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Henry whose telephone number is 571-272-0652. The examiner can normally be reached on 8:30 am to 5:00 pm; Mon-Fri. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson can be reached on 571-272-0661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1235.

MCH

September 9, 2009

/Shaojia Anna Jiang/  
Supervisory Patent Examiner  
Art Unit 1623